IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Respondent, v. CHRISTIAN LOUIS WRATHALL, Petitioner.	2 CA-CR 2007-0143-PR DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF GILA COUNTY

Cause Nos. CR2004-490 and CR2004-576

Honorable Peter J. Cahill, Judge

REVIEW GRANTED; RELIEF DENIED

Daisy Flores, Gila County Attorney
By June Ava Florescue
Globe
Attorneys for Respondent

Christian Louis Wrathall
Watonga, OK
In Propria Persona

E S P I N O S A, Judge.

¶1 Pursuant to a written plea agreement encompassing four separate cases, petitioner Christian Wrathall was convicted in two of those cases of sale of a dangerous drug, a class two felony, and attempted sale of a dangerous drug, a class three felony. The convictions arose from separate offenses, one committed in August 2003 and the other in

August 2004[1] while Wrathall was on release from custody for the first offense. The trial court sentenced him to consecutive, presumptive prison terms totaling 8.5 years. Wrathall then filed a petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., primarily challenging the imposition of consecutive sentences. The trial court summarily denied relief, and this petition for review followed. We will not disturb a trial court's ruling on a post-conviction petition unless an abuse of discretion affirmatively appears. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). We find no abuse here.

¶2 "A trial court has broad discretion to determine the appropriate penalty to impose upon conviction, and we will not disturb a sentence that is within statutory limits . . . unless it clearly appears that the court abused its discretion." *State v. Cazares*, 205 Ariz. 425, ¶ 6, 72 P.3d 355, 357 (App. 2003). We will find an abuse of sentencing discretion only if the court acted arbitrarily or capriciously or failed to adequately investigate the facts relevant to sentencing. *State v. Ward*, 200 Ariz. 387, ¶ 6, 26 P.3d 1158, 1160 (App. 2001).

¶3 Before pleading guilty, Wrathall was repeatedly informed that it was within the trial court's discretion to determine whether his sentences would be consecutive or concurrent. At the change-of-plea hearing, the court not only explained the sentencing range to Wrathall but also explained that the court would determine whether his sentences would be concurrent or consecutive. The plea agreement also stated that, although Wrathall would receive presumptive sentences, "[i]t will be at the discretion of the Court to run such sentences concurrent[ly] or consecutively."

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[1]Although the sentencing minute entry refers to the attempted sale as having occurred in August 2003, it is clear that this is a typographical error and that Wrathall committed that offense a year after the first offense.

¶4 At sentencing, the court explained it was imposing consecutive sentences because the offenses were "part of two separate distinct criminal transactions that do great harm to our community and our children." Wrathall challenges the imposition of consecutive sentences, arguing that, contrary to the court's findings, his offenses had been classified as "non-dangerous" and no children were involved. He also suggests the court improperly used one of the offenses as a prior conviction for the other offense, an argument the record does not support.

¶5 In its minute entry denying post-conviction relief, the trial court noted that, although it was not required to list aggravating factors on the record before imposing presumptive, consecutive sentences, it had done so. Section 13-702(B), A.R.S., only requires a sentencing court to state "on the record at the time of sentencing" the reasons for imposing a sentence other than the presumptive term. *See State v. Harrison*, 195 Ariz. 1, ¶ 11, 985 P.2d 486, 489 (1999) (court must state aggravating and mitigating circumstances on record when deviating from presumptive sentence). But, because the court also stated on the record the two factors it had considered in imposing consecutive sentences (Wrathall's offenses were harmful to the members of the community, including children, and he committed two distinct offenses), something it was not required to do, we examine the propriety of the court's consideration of those factors.

¶6 "[A] trial court must choose, among concurrent and consecutive sentences, whichever mix best fits a defendant's crimes." *State v. Fillmore*, 187 Ariz. 174, 184, 927 P.2d 1303, 1313 (App. 1996). Although Wrathall may be correct that no children were involved in these specific offenses, which were indeed deemed "non-dangerous" for

sentencing purposes, the court's general comment that selling dangerous drugs does "great harm to our community and our children" was an observation well within the court's discretion to make. *See State v. Monaco*, 207 Ariz. 75, ¶ 12, 83 P.3d 553, 557 (App. 2004) (when determining whether to impose concurrent or consecutive sentences within the statutory range, trial court is allowed to consider "any evidence or circumstance that the court deems relevant"). That sales of illegal drugs harm the community in which they are sold can hardly be disputed, regardless of the facts involved in the specific matter. Neither did the trial court improperly consider the fact that Wrathall had committed a second offense one year after the first in deciding to impose consecutive sentences. *See* A.R.S. § 13-708(A) ("[I]f multiple sentences of imprisonment are imposed on a person at the same time, . . . the . . . sentences imposed . . . shall run consecutively unless the court expressly directs otherwise . . . .").

¶7 We also reject Wrathall's contention that the trial court failed to properly weigh and consider the mitigating circumstances. He claims the court did not give sufficient weight to the following mitigating factors: he had no prior convictions, and this was his first sentence; pre-indictment delay resulted in his being sentenced at the same time for offenses that occurred a year apart; his involvement in the offenses was minor; and he expressed remorse for his actions. Although a sentencing court must consider evidence offered in mitigation, it is not required to find the evidence mitigating. *State v. Long*, 207 Ariz. 140, ¶ 41, 83 P.3d 618, 626 (App. 2004); *State v. Fatty*, 150 Ariz. 587, 592, 724 P.2d 1256, 1261 (App. 1986). Having reconsidered its original sentencing decision in the post-conviction context, the trial court ratified the sentences it had initially imposed. Nothing in

the available record suggests the court failed to consider any facts relevant to sentencing or otherwise acted arbitrarily or capriciously. *See Ward*, 200 Ariz. 387, ¶ 6, 26 P.3d at 1160.

¶8 In addition, Wrathall seems to suggest that, because the trial court referred at sentencing to a defendant in an unrelated drug matter who had received concurrent sentences, Wrathall likewise should have received concurrent sentences. We reject this unsupported argument and also reject Wrathall's suggestion that the trial court was required to address individually each of his arguments, including this one, in its denial of post-conviction relief. *See* Ariz. R. Crim. P. 32.6(c). Finally, to the extent Wrathall has raised a claim of ineffective assistance of counsel, we decline to address this issue raised for the first time in his reply to the state's response to his petition for review. *See* Ariz. R. Crim. P. 32.9(c)(2).

¶9 We find no basis on which to say the trial court abused its discretion. Therefore, we grant the petition for review but deny relief.

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PHILIP G. ESPINOSA, Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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GARYE L. VÁSQUEZ, Judge